



U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 199600745-4 Issuance Date:
April 7, 2006

Stream: James Creek Closing Date:
May 8, 2006

Please address all comments and inquiries to:
U.S. Army USACE of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (*reference above*)
502 Eighth Street
Huntington, West Virginia 25701-2070 Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Independence Coal Company
HC 78 Box 1800
Madison, West Virginia 25130

LOCATION: The proposed project would be located in the Crook and Sherman Districts of Boone County and in the Marsh Fork District of Raleigh County, West Virginia at Latitude 37°54'20" and Longitude 81°35'07" on the USGS 7.5-minute Whitesville Quadrangle in the watersheds of Chimney Branch and Petry Fork. The proposed project would result in disturbances to Chimney Branch and one of its unnamed tributaries (1st Left Unnamed Tributary of Chimney) and Petry Fork and two of its unnamed tributaries (1st and 2nd Left Unnamed Tributaries of Petry Fork). Chimney Branch and Petry Fork are both tributaries of Matts Creek, near Lindytown. Matts Creek flows into the West Fork of Pond Fork, which flows into the Little Coal River of the Coal River, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and fill material into 7,079 linear feet (1.70 acres) of waters of the U.S in conjunction with the continued construction, operation and reclamation of the Twilight MTR Surface Mine (Surface Mining Control and Reclamation Act Permit S-5023-96). The proposal would involve the construction of two valley fills (No. 4 and 5), two sediment ponds (No. 4 and 5), and four mined through areas. The SMCRA permitted area, associated with the original mining plan and subsequent incidental boundary revisions and amendments, is 2,253.73 acres. Of this total acreage, mineral removal areas encompass 1,475.03 acres while roads (60.41 acres), drainage facilities (6.89 acres) and valley fills (711.90 acres) encompass 778.7 acres. The existing mine consists of multiple valley fills, drainage control systems, a loadout facility and trump dump. The activities involving impacts to waters of the U.S. associated with the original S-5023-96 were authorized by this office under the December 13, 1996 Federal Register, Final Notice of Issuance, Reissuance and Modification of the Nationwide Permits (61 FR 65874), Nationwide Permit 21. Work at the mine site commenced in 1996. Work in waters of the U.S. associated with these previously authorized activities, excluding Valley Fills 4 and 5 and their associated ponds and mined through areas, has been completed.

Prior to valley fill construction, Sediment Ponds 4 and 5 would be constructed resulting in the temporary placement of dredged and fill material into 1,093 linear feet of intermittent stream channels. Construction of Valley Fills 4 and 5 and associated mined-through areas would result in permanent placement of dredged and fill material into 4,759 linear feet (1.28 acres) of intermittent stream channels and 1,227 linear feet (0.16 acre) of ephemeral stream channels. The table attached to this public notice summarizes the proposed impacts to waters of the U.S. According to the applicant, the purpose of the project is to recover the remaining bituminous coal reserves located stratigraphically above and including the Chilton Rider coal seam. Reserves from the project site would be sold on the market to satisfy a currently high demand for coal. Plans for the proposed project are attached to this public notice.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has not submitted a Compensatory Mitigation Plan (CMP) to compensate for permanent and temporary impacts to waters of the U.S. that are regulated by the USACE.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A "Phase I Archaeological Survey for the Proposed Twilight MTR Surface, Boone County, West Virginia" was completed for the proposed project. The survey resulted in the identification of one previously undocumented prehistoric archaeological site. Site 46BO247 consisted of a very light scatter of debitage and one nutting stone located within a bulldozed access road and adjacent spoil piles. No completely intact areas were present in the general site area, and shovel testing of areas showing the least amount of impact failed to produce any evidenced for occupation. Based on the data at hand the site appears to represent a short-term camp or station occupied by a small number of people for a brief period of time. The site is located entirely within a disturbed context which has no potential to contain buried or otherwise intact cultural deposits. The survey recommended that no further archaeological investigations be required. Additionally, a Project-Summary-Short Form was completed for the proposed project by the West Virginia Division of Culture and History (SHPO). This form noted the presence of Site 46BO247. A previously recorded site 46BO124 (lithic scatter), was noted to be present at the top of hollow in Petry Fork. Additionally, there are over a dozen recorded sites within a one mile radius of the project area; these recorded sites include lithic scatters along ridge lines as well as rock shelters within landforms very similar to those found within the hollows of the Chimney Branch and Petry Fork. These two hollows had moderate to high probability of containing rock outcrops that would be used for prehistoric occupation. The lower portion of Chimney Branch was previously surveyed under FR#95-600-BO, for a water tank. A field review of the two hollows was conducted in December 2003. No sign of petroglyphs was noted in the hollows of the 1st and 2nd Unnamed Tributaries of Petry Fork. The water tank site in Chimney Branch includes two access roads, and the tank which is located on the site slope above the drainage. No signs of mining were identified. At 1,000 feet up the hollow, a small drift punch out was noted. It contained a natural rock overhang and a portion of the entry was covered by a soil slide. An additional rock outcropping was identified approximately 100 feet up the drainage and continued for approximately 250 feet. No overhangs were present. Since no façade or other related components were located, the entry was determined not to be eligible for inclusion in the NRHP. In a letter dated December 18, 2003, the SHPO stated the field reconnaissance located no significant cultural resources and no known historical, architectural or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by this project. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. Timbering operations within the project area were conducted in 2001 and potential roost trees are not expected to be present. Summer habitat requirements for the species are not well defined but the following are considered important:

- 1) Dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas.
- 2) Live trees (such as shagbark hickory and oaks) which have exfoliating bark.
- 3) Stream corridors, riparian areas, and upland woodlots which provide forage sites.

Should the proposed site contain trees or associated habitats exhibiting characteristics listed above, timber removal operations must be conducted during the hibernation period, November 15 to March 31. This restriction would be incorporated as a special condition of any DA permit issued for this proposed project. The proposed project area was investigated for the presence of open, abandoned portals or other features that could provide summer and winter habitat for the Virginia big-eared bat or hibernaculum for the Indiana bat. No portals or other features were identified within the proposed project area that provide habitat for these endangered bats. The USACE has determined the proposed project is not likely to adversely affect threatened or endangered species or their critical habitat. Section 7 requirements under the Endangered Species Act (ESA) have been fulfilled. This public notice serves as a request to the Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the ESA Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest, which may be adversely affected, and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.


Ginger Mullins, Chief
Regulatory Branch

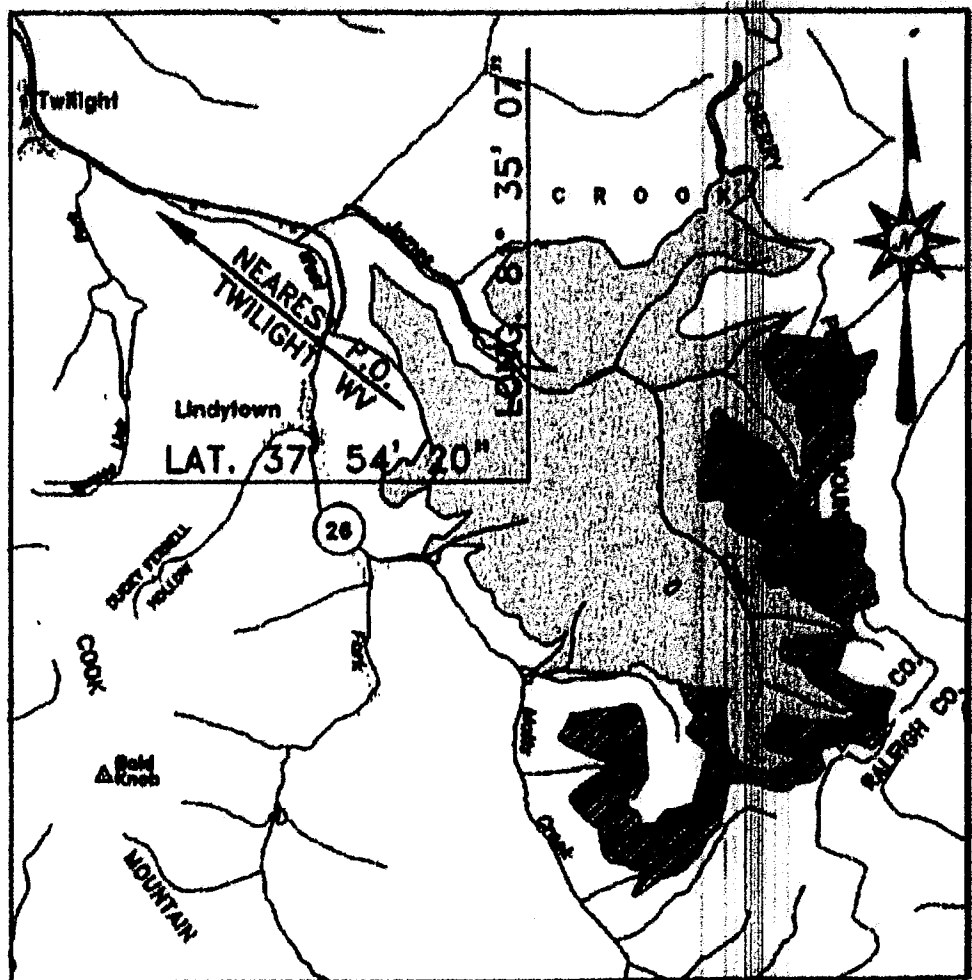
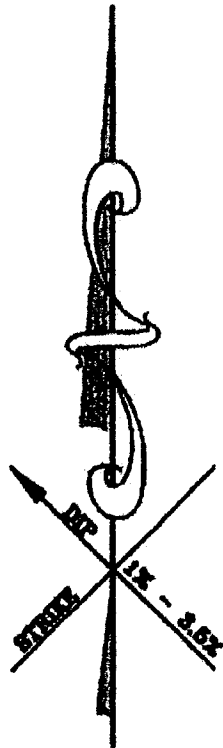
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Attachment No. 22
Independence Coal Company
Twilight MTR Surface Mine, SMCRA Permit Number SMA S-5023-96
Remaining Impacts for Project Completion

MINING ACTIVITY	STREAM LOCATION	PERMANENT STREAM IMPACTS			TEMPORARY STREAM IMPACTS			AFFECTED DRAINAGE AREA (ACRES)
		Linear Feet	Acres	STREAM CLASSIFICATION (E, I, OR P)	Linear Feet	Acres	STREAM CLASSIFICATION (E, I, OR P)	
Valley Fill No. 4	Chimney Branch of Matts Creek	1,946 24	0.4074 0.0030	I E	-- --	-- --	-- --	168.71
Mined Through Area	Chimney Branch of Matts Creek	176	0.0234	E	--	--	--	168.71
Mined Through Area	1 st Left Unnamed Tributary of Chimney Branch of Matts Creek	127	0.0139	E	--	--	--	168.71
Valley Fill No. 5	Petry Fork of Matts Creek	2,013	0.7116	I	--	--	--	288.70
Valley Fill No. 5	1 st Left Unnamed Tributary of Petry Fork of Matts Creek	400 427	0.0390 0.0341	I E	-- --	-- --	-- --	288.70
Valley Fill No. 5	2 nd Left Unnamed Tributary of Petry Fork of Matts Creek	400 46	0.1205 0.0150	I E	-- --	-- --	-- --	288.70
Mined Through Area	1 st Left Unnamed Tributary of Petry Fork of Matts Creek	273	0.0302	E	--	--	--	288.70
Mined Through Area	2 nd Left Unnamed Tributary of Petry Fork of Matts Creek	154	0.0355	E	--	--	--	288.70
Area associated with Pond No. 4 Construction	Chimney Branch of Matts Creek	--	--	--	506	0.0815	I	227.38
Area associated with Pond No. 4 Construction	1 st Left Unnamed Tributary of Chimney Branch of Matts Creek	--	--	--	300	0.0390	I	227.38
Area associated with Pond No. 5 Construction	Petry Fork of Matts Creek	--	--	--	287	0.1539	I	294.47
Total – By Stream Classification		4,759 1,227	1.2785 0.1551	I E	1,093	0.2744	I	
Total – Stream Impacts		5,986	1.4336		1,093	0.2744		

Note: Ponds are located as close as practicable to the valley fill toe locations.

E-Ephemeral
I-Intermittent
P-Perennial



Location Map

WV General Highway Map

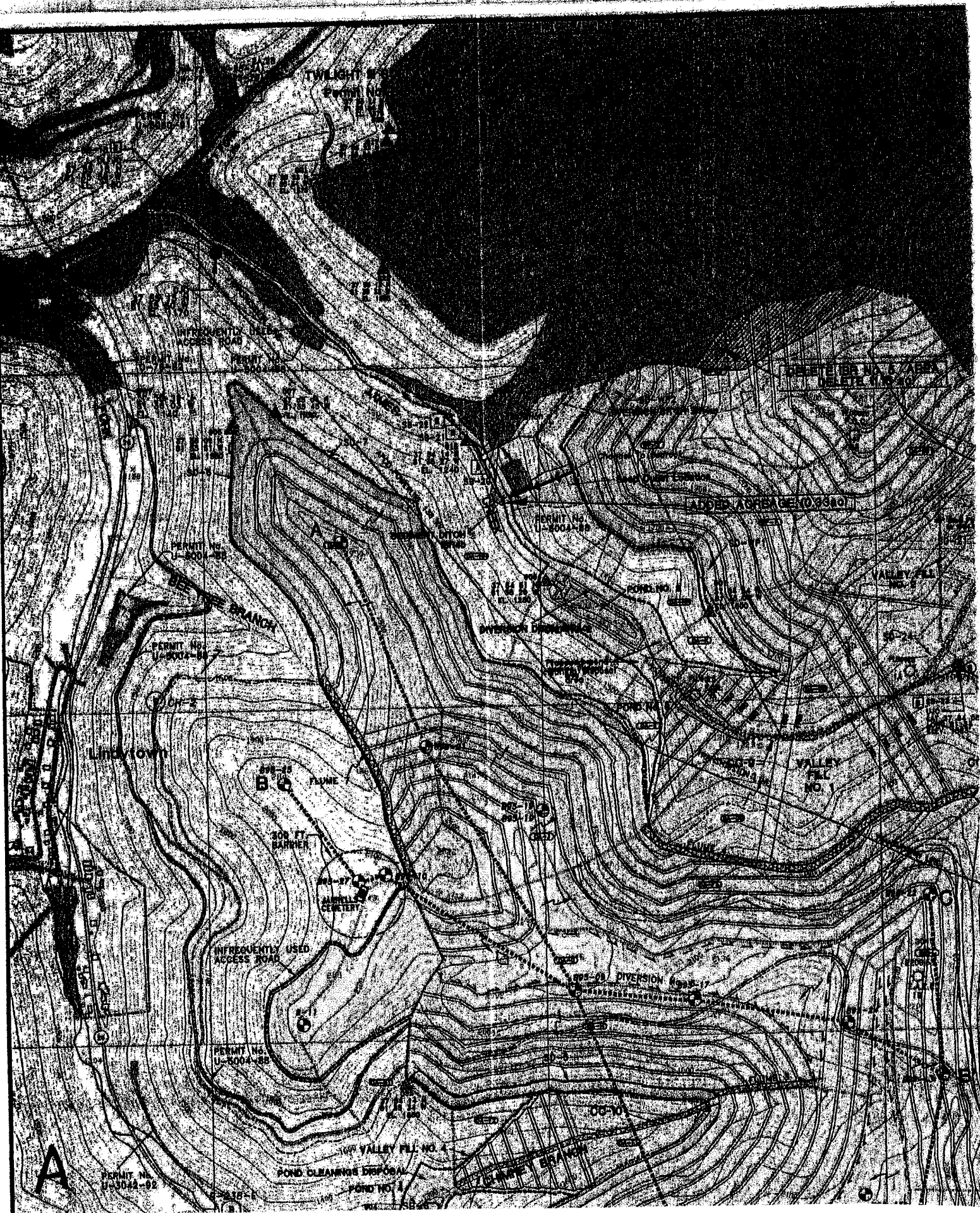
County: Boone & Raleigh

District: Creek, Sherman & Marsh Fork

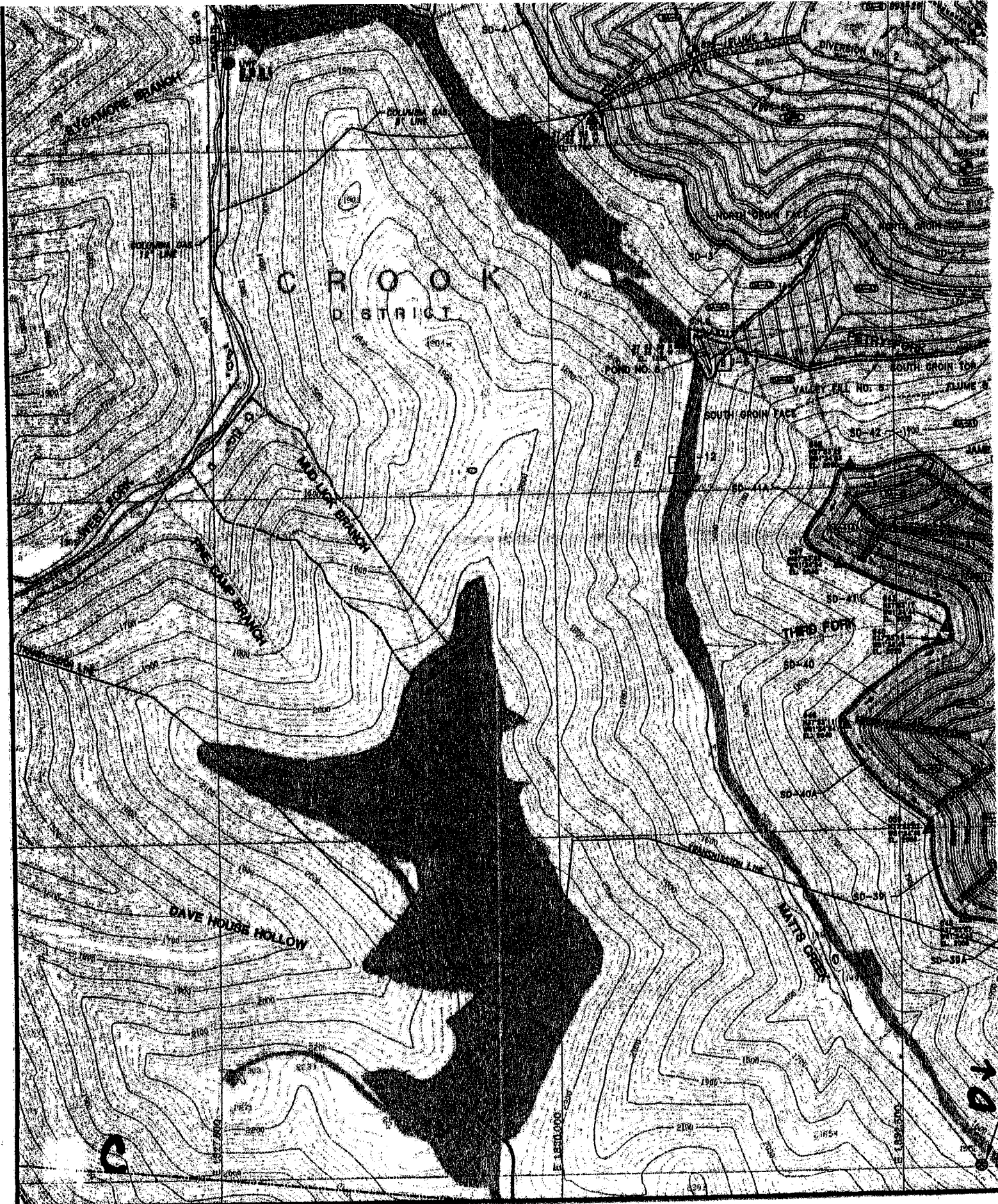
Scale: 1" = 1 Mile

Nearest P.O. = Twilight

Quadrangle: Whiteville







1:50,000 Scale

